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In the Supreme Court of the United States

OCTOBER TERM, 1964

JIM GARRISON,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Application for Appeal from the Supreme Court of Louisiana or Alternatively Writ of Certiorari to the Supreme Court of Louisiana

BRIEF ON BEHALF OF STATE OF LOUISIANA, APPELLEE

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No. 400

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On Application for Appeal from the Supreme Court of Louisiana or Alternatively Writ of Certiorari to the Supreme Court of Louisiana

BRIEF ON BEHALF OF STATE OF LOUISIANA, APPELLEE

May it Please the Court:

STATUTES INVOLVED

1. Constitution of Louisiana, Article 7, Section 41

"All (criminal) cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury."

* * * * * * * *

2. Louisiana Revised Statutes Title 14, Sections 340 and 341

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

3. Constitution of Louisiana, Article 1, Section 3

"No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

4. Louisiana Revised Statutes of 1950, Title 14 (Criminal Code).

"§47. Defamation

"Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both."

* * *

"§48. Presumption of malice

"Where a non-privileged defamatory publication or expression is false it is presumed to be mali-

cious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender."

"§49. Qualified privilege

"A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations:

(1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same.

(2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon,

(a) The conduct of a person in respect to public affairs; or

(b) A thing which the proprietor thereof offers or explains to the public.

(3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such a relation to the former as to afford a reasonable ground for supposing his motive innocent.

(4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

* * *

"§50. Absolute privilege

"There shall be no prosecution for defamation in the following situations:

(1) When a statement is made by a legislator or judge in the course of his official duties.

(2) When a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy.

(3) Against the owner, licensee or operator of a visual or sound broadcasting station or network of stations or the agents or employees thereof, when a statement is made or uttered over such station or network of stations by one other than such owner, licensee, operator, agents or employees. As amended Acts 1950, No. 469, §1."

QUESTIONS PRESENTED

1. There is no federal question involved for the reason that the Louisiana Supreme Court did not hold that the Louisiana Defamation Statute was applied as a sedition act for criticism of public officials.

2. There is no federal question involved as to clear and present danger, as the Defendant was charged not with contempt of court, but with the crime of defamation.

3. There is no federal question involved as the right to a jury trial in a state prosecution is not a fundamental of due process under the First or Fourteenth Amendments or any other provision of the Federal Constitution.

4. There is no federal question involved because the United States Supreme Court has previously determined that a criminal prosecution by a state under a defamation statute does not violate the First or Fourteenth Amendments.

STATEMENT OF THE CASE

This is an appeal from the final judgment of the Louisiana Supreme Court, upholding the conviction of appellant of the crime of Defamation.

Following his induction into office as District Attorney of Orleans Parish, in May 1962, appellant embarked upon a career of public speaking (R 246-249, 250-260, 261, 267, 274-275) and the spending of public funds (R 315-318, 327, 351-352, 354, 357, 359, 365-368, 377, 384-385, 408, 478, 512-516.)

The Judges of the Criminal District Court for the Parish of Orleans, who were responsible for approving the expenditures of appellant from the fines and forfeitures fund (R.S. 15:571.11) became alarmed at the open-handedness of appellant in disbursing the funds. (R 350-351, 365-368, 384, 476, 510-516, 530, 616.)

Their apprehension was well founded, for it was appellant's attitude that the fund was his to spend in any way he saw fit and that it was his duty to spend it as fast as possible (R 255, 624.)

Appellant's alleged falsehood to one judge concerning the approval by another judge of one of his expenditures brought matters to a head, culminating

in a rule adopted by the judges en banc that all expenditures from the fund were to be approved by five of the eight judges. (R 350, 354-355, 418-419, 424-425, 511.)

Filled with venom at being frustrated by the Criminal Court judges, and spewing hatred like an avenging Fury, appellant, on November 2, 1962, struck back against a retired judge (R 307) with a statement defaming the eight incumbent judges as individuals and gave this statement to a New Orleans newspaper with net sales on that day of 74,608. (R 196-198, 209, 210-215, 229, 266.)

This defamatory statement is the subject of the present appeal and appears in full in R 27-32.

Not satisfied with the hatred, ridicule and contempt engendered by his charge, among others, of "racketeer-influence" in the latter statement, and the wide publicity it had received, appellant continued to castigate the judges as individuals (R 256, 259, 236-238, 247-249) referring to them publicly as "sacred cows" (R 277), and "a band of armed robbers" (R 259), among other epithets (R 612.)

On November 8, 1962 the eight Criminal District Court Judges for the Parish of Orleans, as individuals, filed an affidavit against Jim Garrison, the appellant herein, charging him with defamation in violation of La. R.S. 14:47. R 22. Immediately thereafter, *appellant, through Frank J. Klein, appellant's 1st Assistant District Attorney, dismissed the charge*, R 22, whereupon the eight Criminal District Court

Judges for the Parish of Orleans, State of Louisiana, petitioned the Attorney General under authority granted by the State Constitution (Article 7, Section 56) to file a bill of information charging appellant Jim Garrison with defamation in violation of La. R.S. 14:47, the appellant being a party at interest, namely the accused. R 22-24.

Accordingly, Jim Garrison, appellant, was charged with the crime of defamation on November 15, 1962 in the Criminal District Court for the Parish of Orleans in violation of Louisiana Revised Statutes 14:47. The Bill of Information charging the defendant with the offense of Defamation is contained in R 26-32.

On November 13, 1962, the Supreme Court of the State of Louisiana (on the petition of the State) appointed Honorable William H. Ponder, Judge of the Eleventh Judicial District Court, to sit as Judge ad hoc for Section "C" of the Criminal District Court for the Parish of Orleans for the trial of the instant cause, No. 177-418 of the Docket of the Criminal District Court for the Parish of Orleans, entitled "State of Louisiana versus Jim Garrison". (LSA-R.S. 15:307) R 25. The Order was effective immediately. All of the judges of the Criminal District Court for the Parish of Orleans, including the presiding Judge of Section "C", to which Section this case had been allotted, recused themselves, and Judge-ad-hoc Ponder proceeded with trial of the cause. R 1.

Prior to trial on the merits, appellant filed Mo-

tions to Recuse Judge-ad-hoc Ponder R 33, a Demurrer, and a Motion to Quash, R 36, and an Application for a Bill of Particulars, R 34, on December 4, 1962. On December 5, 1962, appellant filed a Motion for Trial By Jury, R 38. All four Motions were overruled by the court, R 4, and the State then filed an Answer to appellant's Application for a Bill of Particulars, R 40. The State also filed a Motion to Recuse District Attorney Garrison, he being a party at interest, R 26, which Motion was sustained by the trial court. Appellant was represented in the state courts in proper person, R 1, and by attorneys Donald V. Organ and Louis P. Trent, R 4.

Thereafter, appellant was tried and on February 6, 1963, the court rendered its judgment of "Guilty as Charged." R 14.

A review of the testimony adduced at the trial is found in the trial court's opinion of February 6, 1963 (R 610-625.) The court found as facts that the statement was defamatory (R 627), that it was false in its essential particulars (R 627), that appellant could not have had a reasonable belief as to its truth (R 632), and that appellant was motivated by actual malice (R 631, 633).

Appellant moved for a new trial and filed a motion in arrest of judgment, both of which were overruled. (R 16, 57, 58, 635-636). Appellant was sentenced to pay a fine of $1,000, or to four months imprisonment in the Parish Prison (R 637-640).

On appeal, the Louisiana Supreme Court affirmed

defendant's conviction and sentence (R 118-173).

Appellant, in his statement of the case, has set forth certain facts which are misleading. Particular reference is made to footnote number 1, on page 6 of appellant's brief, which contains a partial statement of the reasons given by the trial judge concerning the motivating influence of the judges in adopting a policy of meeting en banc to approve disbursement of the fines and forfeiture funds.

The Court is referred to the following statement of the trial judge:

> "I gather from the evidence that this action was based on the belief that the Defendant was being extravagant in the expenditure of funds, spending them excessively without supporting vouchers and affidavits or bills or showing of the necessity thereof. Also, it was brought about by reason of the fact that some of the judges thought the District Attorney might have been playing one judge against the other to get the bills approved." R 630.

Further, the appellant has made the statement that the utterances of the Defendant, which were the basis for the prosecution, related solely to the judges' official conduct. The appellant also states that at no point did the Defendant's utterances refer to the private conduct of any of the judges. (See page 9 of Appellant's brief). This is a false assumption as the appellant remarks were not a comment on the judges' official conduct, but were a false statement constituting pure personal abuse.

The Appellant in his statement of the case states that the trial judge, although "holding that 'the defamatory statement might not have been issued without some provocation', found the appellant guilty" and sentenced him to a fine of $1000 or four months. This is an attempt on the part of the appellant to confuse the Court as this was *not* a part of the Judge's reasons for his decision, but rather was a mitigating circumstance which was considered by the judge *for the purpose of imposing sentence.* (R 688)

ARGUMENT

In our opinion, the appellant has made a definite effort to confuse the Court by implying that there is no distinction in law between the offense of contempt of court, the crime of defamation, and sedition, as known in the common law, or the Sedition Act of July 14, 1798, 1 statute at large 596. (See appendix A). The distinction is clear as contempt of court is an offense against a Court and the administration of justice, defamation as defined by Louisiana Law is a crime which tends to breach the peace, and sedition is a crime against organized government.

The legislature of Louisiana has clearly evidenced this difference by placing the defamation statute in one section of its Revised Statutes, and placing the offenses against organized government, such as, anarchy, treason, and the anti-communist act in entirely different sections of the Revised Statutes (Louisiana R.S. of 1950, Title 14 (Criminal Code) Sections 47-50 and Sections 119-et seq; Sections 358-et seq). The of-

fense of contempt of court is either of a summary nature or a contempt committed out of the presence of the Court, and is contained in Articles 221-227 of the Louisiana Code of Civil Procedure and is subdivided therein as direct contempt and constructive contempt, constructive contempt being any contempt of court other than contempt of court committed in the present of the Court. (See Appendix B.)

The other attempt appellant has made to confuse the issue is his deliberate failure to distinguish between the guarantee of freedom of speech and the press in the First Amendment of the U.S. Constitution to insure that previous restraints upon the publication of beliefs, whether spoken or written, would be prohibited and the appellant's responsibility for the publication of scandalous and libelous statements.

Prior to taking up the points of law involved herein appellee would like to quote from a recent decision of the Louisiana Supreme Court, entitled *State of Louisiana v. Warren J. Moity*, ___ Louisiana ___, 159 So. 2d 149:

> "However, these prohibitions against invasion by the states as set forth in the decisions of the highest court of our country are not so all-inclusive they cover with a protecting blanket any and all statements made or published by individuals or organizations. In the early and celebrated case of *People v. Croswell*, decided in 1804, where the defendant was accused of defaming the then President of the United States, Thomas Jefferson, it was pointed out that "The founders of our

governments were too wise and too just ever to have intended, by the freedom of the press, a right to circulate falsehood as well as truth, or that the press should be the lawful vehicle of malicious defamation, or an engine for evil and designing men to cherish, for mischievous purposes, sedition, irreligion, and impurity. Such as abuse of the press would be incompatible with the existence and good order of civil society." 3 Johnson's cases, at page 337.

"The decisions of the states, as well as of the United States Supreme Court and the recognized and renowned commentators on the source and meaning of the provisions of our federal constitution and Bill of Rights, are replete with expressions reflecting that the primary purpose for the guaranty of freedom of speech and the press in the First Amendment was to insure that *previous restraints* upon the publication of beliefs, whether spoken or written, would be prohibited—not that those disseminating them could do so with inpunity and thus go unchallenged if the consequences of such publication unjustifiably damaged others. See, *Patterson v. Colorado*, 205 US 454, 51 L ed 879; *Near v. Minnesota*, 283 US 697, 75 L ed 1357; *Schenck v. US*, 249 US 47, 39 S. Ct. 247, 63 L ed 470; *State v. Van Wye*, 136 Mo. 227, 37 SW 938; *State v. Boyd*, 86 N.J.L. 75, 91 A. 586; *National Labor Relations Board v. Blatt Co.*, 143 F. 2d 268, certiorari denied 65 S. Ct. 135, 323 US 774, 89 L ed 619; *People v. Feiner*, 300 N.Y. 391, 91 NE 2d 316, affirmed 71 St. Ct. 303, 340 US 315, 95 L ed 267; *Times Film Corporation v. City of Chicago*, 139 F. Supp.

837, affirmed 244 F. 2d 432, reversed on other grounds at 78 S. Ct. 515, 355 US 35, 2 L ed 2d 72; *Shively v. Garage Employees Local Union No. 44*, 108 P. 2d 354, 6 Wash. 2d 560; *Baxley v. U.S.*, 134 F. 2d 937; 6 R.C.L. 253, Sections 239-242; 33 Am. Jur. 291, Section 308, et seq., and the authorities therein cited."

"To state it succinctly as was done in *State v. Van Wye, supra*, "The laws punishing criminal libel have never been deemed as infringement of this constitutional guaranty." In that decision it was further pointed out that "The constitutional liberty of speech and of the press, as we understand it, simply guaranties the right to freely utter and publish whatever the citizen may desire, and to be protected in so doing, *provided, always, that such publications are not blasphemous, obscene, and scandalous in their character, so that they become an offense against the public, and, by their malice and falsehood, injuriously affect the character, reputation, or pecuniary interests of individuals. The constitutional protection shields no one from responsibility for abuse of this right.*" (The emphasis has been supplied.)

"In discussing the purpose of these constitutional privileges as historically conceived and guaranteed, the United States Supreme Court, in *Near v. Minnesota, supra*, pointed out: "In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty *to prevent previous restraints upon publication.* The struggle in England (from which country the criminal law of Louisiana is deraigned), directed

against the legislative power of the licenser, resulted in renunciation of the censorship of the press. The liberty deemed to be established was thus described by Blackstone: 'The liberty of the press is indeed essential to the nature of a free state; but this consists in laying *no previous restraints upon publication, and not in freedom from censure for criminal matter when published.* Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but *if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.*' " 283 US at pages 713 and 714. (The emphasis and words within brackets have been supplied.)"

1. The Louisiana Supreme Court did not hold that the Louisiana Defamation Statute was applied as a sedition act for criticism of public officials

Seditious libel is a crime tending to destroy organized government or constituted authority.

Criminal defamation does not concern the security of government but is a crime involving injury to individuals which can result in breach of the peace. Appellant was not prosecuted for criticism of government, but for defaming individuals.

Sedition is the raising of commotions and disturbances in the state or a revolt against legitimate authority, and an accusation of sedition is libelous per se as imputing a crime. *Arizona Public Company v. Harris*, 181 P. 373, 375, 20 Arizona 446.

The term sedition means something more than theoretical discussion. *State v. Aspelin*, 203 P. 964, 965, 118 Wash. 331.

The offense known in England as "sedition" consisted of speaking or writing against the character and constitution of the government, or seeking to change it by any means except those prescribed. *State ex inf. Crow v. Shephen*, 76 S. W. 79 83, 177 Mo. 205.

Sedition is the incitement of discontent against government or of resistance to lawful authority. Chafee, *Free Speech in the United States* (1954) p. 497. It consists of the wilful utterance, writing, or publication of disloyal, scurrilous or abusive matter against the nation, or a state, which matter advocates or encourages opposition and hostility to organized government. 47 *Am. Jur.* page 610; 46 *Corpus Juris Secundum* pp 1085, 1087-1088. The purpose of sedition statutes is to protect the life of the state, and an intent to overthrow the government is an essential element of the offense. Sedition statutes have no relation to acts, criminal or otherwise, which was wrongs against persons or property as such and cause merely incidental harm to the state. "A seditious libel must be directed against the political system of government; mere attacks on the personnel of government do not necessarily tend toward sedition." 47 *Corpus Juris Secundum*, pp 1093-1094; *People v. Edmondson*, 4 N. Y. S. 2d 257, 168 Misc. 142.

Sedition is defined in Black's Law Dictionary (Deluxe Fourth Edition) as "attempts made by meet-

ings or speeches, or by publications, to disturb the tranquility of the state," citing *Arizona Public Company v. Harris*, 181 P. 373, 375, 20 Arizona 446. Seditious libel is also defined in Black's Law Dictionary as being, in English Law, a written or printed document published with the intention to excite dissatisfaction against the government and constitution as established by law, or to excite citizens to attempt to alter established constituted authority by other than lawful means, or to promote feelings of hostility between different classes.

The federal Sedition Law of July 14, 1798 (See Appendix A) did not punish injury to private reputation but was aimed at the publication of false and malicious matters against government, intending to incite people to oppose and defeat laws and official action. This law was never judicially declared violative of the First Amendment. Rather, because of its unpopularity, it was allowed to expire of its own limitation in 1801. See Cooley, *Constitutional Limitations*, (8th ed.) Vol. 2, p. 900.

Appellant's position is that all criminal prosecutions for defamation are prohibited by the First and Fourteenth Amendments when they concern statements defaming public officials. Appellant cites no authority for this incredible proposition, for no court has ever held this. Appellant argues further that any criticism of a public official is seditious libel, that all appellant did was to criticize public officials and that his prosecution is therefore nothing more than a

prosecution for seditious libel, which was unpopular with the American colonists and has fallen into disrepute.

Mere criticism of public officials is not seditious libel. There must, in addition, be an incitement against organized government, as amply demonstrated by authorities hereinabove cited. Appellant was not tried for "destroying the confidence of the people in their officers," or for "sapping the foundation of the government," or for "examining public characters and measures," or for "criticism of government," or for "expression on matters within the public domain." Appellant was tried for maliciously publishing an expression which exposed eight individuals, who happened to be judges, to hatred, contempt, and ridicule, under "the ordinary law of libel", as sanctioned by Professor Corwin in *Freedom of Speech and Press under the First Amendment*, 30 Yale Law Journal 48, 51 (See page 23 of appellant's brief.)

The publication in question was not a mere narrative or criticism of official conduct or the propriety of official procedure; not a plea for reform of the judicial system or the exposure of any idea or philosophy of official conduct. The thrust of the publication was an attack on the worth of judges as individuals and an attack on their personal reputations.

Appellant went beyond mere criticism of public officials and attacked the personal integrity of each of the eight criminal court judges as individuals when he stated that they were influenced by racketeers

and that they blocked his vice investigations because they were sympathetic to vice. Appellant did not state any facts from which the inference that the judges were sympathetic to and influenced by racketeers could reasonably be drawn. He asserted that as a matter of fact this condition of racketeer influence existed, and his statement was an out-an-out falsehood.

There is a difference between criticism or fair comment on admitted facts and the assertion of unsubstantiated facts. "Privilege does not extend to the publication of false statements of fact concerning public officers." *Martin v. Markley*, 202 La. 291, 11 So 2d 593. "It is one thing to state admitted facts and comment thereon, and quite another to accuse a man of wrongdoing on unproved allegations." *Madison v. Bolton*, 234 La. 997, 102 So.2d 433, 438, n. 6; see also *State v. O'Donnell*, 141 La. 886, 75 So. 811; *Kennedy v. Item*, 213 La. 347, 34 So 2d 886; *Naihaus v. La. Weekly Pub. Co.*, 176 La. 240, 145 So. 527; *Deshotel v. Thistlewaite*, 240 La. 12, 121 So 2d 222, 225; *Cadro v. Plaquemine Gazette*, 11 So 2d 10; *Miller v. Capital City Press*, 142 So. 2d 462, 473; Odgers, on Libel (5th ed.), p. 197; Marr's *Criminal Jurisprudence of Louisiana*, pp. 215-216; Cooley's Constitutional Limitations (8th ed.) Vol. 2, pp. 920-922.

In *Deshotel v. Thistlethwaite*, 240 La. 12, 121 So 2d 222, the court stated:

"Louisiana recognizes the doctrine of qualified

> privilege respecting fair comment and criticism of public officers and men in public life, but 'the privilege does not extend to the publication of false statements of fact concerning public officers'."

This has always been the thinking of scholars in Louisiana. As Edward Livingston stated in 1822 in his introductory report on the Louisiana Code of Crimes and Punishments:

> "But when any of the public functionaries, in either of the great branches of government, are personally attacked—when animadversions on public proceedings are made the vehicle for injury to private character — then the law protects them as it does any other individuals; and, although there can be no libel against the government, or the court, yet the legislator and the judges are not left without the same redress that is given to their fellow citizens."

Complete Works of Edward Livingston, Volume 1, page 292.

The purpose of criminal libel or defamation statutes is twofold: the preservation of the public peace and the protection of all members of society from injury resulting from malicious utterances. See *Republica v. Oswald*, 1 U.S. 319, 1 dall 319, 1 L. Ed. 155; *Beauharnais v. People of Illinois*, 343 U.S. 250, 96 L.Ed. 919, 72 S. Ct. 725; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L. Ed. 1031, 62 S. Ct. 766; Burdick, *The Law of Crime*, Vol. 3, Sec. 786, pp. 151-152; 2 Wharton's *Criminal Law*, Sec. 878.

741; Note, 52 Col. L. Rev. 521, 528; Anno., 19 A.L.R. 1470-1543; Tanenhaus, *Group Libel*, 35 Cornell Law Quarterly 261, 273; Dean, *Hatred, Ridicule or Contempt* (1954) p. 10.

Not only does a state have an interest in protecting its citizens from injury inflicted by defamatory utterances and an interest in preventing breaches of the peace caused by defamatory utterances, but such insulting or "fighting words" as those used by appellant are abuses of the First Amendment and are of such slight social value that their prevention and punishment raises no constitutional problem. *Chaplinsky v. New Hampshire, supra; Beauharnais v. Illinois, supra; Bantam Books, Inc. v. Sullivan*, 83 S. Ct. 631; Cooley, *Constitutional Limitations* (8th Ed) Volume 2, pp. 883-884, 886, 938-939.

There is nothing in the record to support appellant's claim that "preservation of magistrates from seditious utterances, rather than preservation of the peace" was "the real motivating factor for appellant's defamation prosecution."

Nor is there any authority (other than Emerson's theory in a law review article) for appellant's

[1]"No man may disparage the reputation of another, for every man has a right to have his good name maintained unimpaired; his right is a *jus in rem*, absolute and good against the world. . . . The law is just as studious of the reputation and character as of the property of the citizen." Marr's *Criminal Jurisprudence of Louisiana* (2d Edition) Vol. 1, pp. 197-198; see also American Jurisprudence, *Verbo* Constitutional Law, Sec. 328; Le Buffe and Hayes, *The American Philosophy of Law*, (4th Edition 1947) pp. 234-238.

view that preservation of the peace no longer requires criminal prosecution for private defamation; that, after all, violence is old-fashioned because people generally accept the rules of law in their disputes.

This Epimethean concept denies reality and overlooks the henious crimes of violence in Dallas, Texas, of November 22 and 24, 1963. These crimes, it has been charged by those in authority, are a result of "the hate and venom poured into the bloodstream of America" by hate-engendering speakers.

The Louisiana defamation statute prohibits the spreading of hate in order to prevent breaches of the peace by revenge-seeking victims, their relatives, and friends. This is a legitimate interest of the State.

As Edward Livingston stated in 1822 in his Introductory Report to the Louisiana Code of Crimes and Punishments:

> "If lawgivers had originally condescended to pay some attention to the passions and feelings of those for whom they were to legislate, these appeals to arms would never have usurped a power superior to the laws; but by affording no satisfaction for the wounded feelings for honour, they drove individuals to avenge all wrongs of that description, denied a "place in the code of criminal law. . . . The satisfaction by private suit must necessarily be of a pecuniary nature. Men, therefore, who think highly of reputation are unwilling to have theirs appreciated by that standard. They will, then, either suffer the injury to go unpunished, *or they will in this, as in most other cases where no remedy, or an inadequate one,*

> *is provided, take the law into their own hands;* and it is no improbable conjecture, that a very great proportion of the many breaches of the peace, and deaths by duels, which originate in verbal provocation, might have been avoided, had an adequate satisfaction been provided by law. . . . The happiness of individuals, the quiet of families, and the peace of society, depend so much on the protection given by the laws to reputation, that this title is more minute in its provisions than many of the others."

Complete Works of Edward Livingston, Volume 1, pages 293, 294, 295, 296. See also Marr's Criminal Jurisprudence of Louisiana (2d Ed.) p. 197.

In early times, if someone put out your eye, you waylaid him and knocked his brains out; if someone destroyed your reputation, you waylaid him and committed mayhem. But there came a time in the development of civilization when it was determined that personal revenge should not be allowed and that in the public interest, constituted authority should prevent acts of personal revenge by taking unto itself the prevention and punishment of crime. See Wormser, *The Law* (1949), page 16.

As pointed out by Livingston, men respect the rule of law when there is a remedy in court for offenses against their private reputation. Deprived of this remedy, the victim, his family, and friends would again resort to taking the law into their own hands to avenge malicious damage to their reputation. This is an evil (breach of peace, assault, battery, or other

unlawful trespass) that Louisiana in its criminal defamation statute has sought, and has the right to seek, to prevent.

It makes as much sense to claim that the resort of frustrated men to violence is outdated as to claim that the hypothalamus and the adrenalin glands are outdated. There is a clear and present danger that the average person, as the Louisiana law of defamation wisely recognizes, is likely to be provoked to breaches of the peace by defamatory utterances against himself or his loved ones.

Perhaps a member of that infinitesimally small segment of our society known as the "intellectual elite" would not resort to violence for vengeance if he were called a racketeer; but a state cannot create classifications within its criminal libel statute by providing that intellectuals and judges are not pugnacious, whereas truckdrivers and prizefighters are; that therefore defamatory utterances against the former are not criminal, but those against the latter are. This would be the effect of maintaining appellant's position. Appellant has lost sight of the fact that laws are enacted to cope with reality, and not for the idealist's version of Utopia.

Finally, appellant's argument that all defamation statutes are invalid and that an absolute privilege ought to attach to any defamatory utterance against a public official, no matter how false, malicious, and personally abusive, is not supported by any authority. Appellant seeks to substitute his judgment for

that of the Legislature of Louisiana, which has determined that absolute privilege exists only for legislators and judges in the course of their official duties, and for witnesses during a trial (R.S. 14:50) .

With reference to comments on public officials, the Louisiana Legislature has declared that only a qualified privilege, based on reasonable belief, exists. This privilege is qualified in that it can be destroyed by the actual malice which was proved in the case at bar. (R.S. 14:49)

It is the province of the legislative body to determine the question of absolute and qualified privilege, and appellant's arguments as to the wisdom of these provisions have no bearing on their constitutional validity.

2. Clear and present danger is not involved as appellant was prosecuted for the crime of defamation and not the offense of contempt of court.

In order to facilitate the Court in its comparison of the Louisiana defamation statute and the Louisiana statutory provisions defining what constitutes contempt of court, the latter statutes are included in Appendix B of this brief. (C.C.P. Articles 221-227; R.S. 13:4611, R.S. 15:11 & 12)

An examination of Louisiana's statutory provisions on contempt reveals that they set forth the standard concept of contempt as an interference with the orderly administration of justice or an impairing of the dignity of a court.

Appellant herein was not prosecuted for obstructing justice or for affronting the dignity of a court or for criticizing the official conduct of judges.

Appellant herein was not convicted of contempt of court.

Appellant herein was prosecuted for and convicted of defamation of individuals involving injury to their personal reputations, under R.S. 14:47-50.

Contempt is essentially an offense against the orderly administration of justice, while defamation is essentially a crime against society involving injury to individual human beings.

The purpose of contempt proceedings, which arise from the inherent power of courts to prevent obstructions of justice, is to protect judicial authority from obstruction in the performance of its duties. *Ex parte Hudgings*, 39 S. Ct. 337, 249 U.S. 378, 63 L.Ed. 656; *Bridges v. California*, 314 U.S. 252, 62 S. Ct. 190; *Pennekemp v. Florida*, 66 S. Ct. 1029, 328 U.S. 331, 90 L.Ed. 1295; *Wood v. Georgia*, 82 S. Ct. 1364, 370 U.S. 375, 8 L.Ed. 2d 569. "Contempt proceedings are sui generis, neither civil actions nor prosecutions for offenses, within the ordinary meaning of these terms, but an exercise of the power inherent in all courts to enforce obedience, something they must possess in order to perform their functions." *Meyers v. U.S.*, 44 S.Ct. 272, 264 U.S. 95, 68 L.Ed. 577. "A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court, and private parties have little, if any interest in the

proceedings for its punishment." *Bessette v. Conkey*, 24 S.Ct. 665, 194 U.S. 324. See *The Constitution and Contempt*, 61 Mich. L. Rev., 283, 297-298, 303, 350.

"Contempt sanctions are aimed at misconduct which interferes with governmental activity." 61 Michigan Law Review 318.

In contempt proceedings, neither truth, nor privilege, nor the absence of malice are defenses. In direct contrast, all of the latter safeguards are present in the Louisiana defamation statute.

The Louisiana defamation statute contains all the standards of civil libel. Like civil libel, it is based on injury to reputation, which must be proved as an element of the crime. See Dean, *Hatred Ridicule, or Contempt* (1954) pp. 10-14; R.S. 14:47.

As in civil libel, the Louisiana Defamation statute provides for truth as a defense. R.S. 14:48. Failure to allow truth as a defense is what led to the widespread criticism of the trial of Peter Zenger, which is relied on heavily in appellant's brief. See Wormser, *The Law* (1949) pp. 327-328. The criticism of the Zenger case could have no application to the Louisiana defamation statute, which provides for the taking of truth into consideration.

Under the Louisiana defamation statute, truth is not tied to the presence of good motives, as appellant erroneously states on page 43 of his brief. Appellant confuses the defense of "justifiable motive", in the event falsity is proved, with the defense of truth under R.S. 14:48. R.S. 14:48 provides that

"where such a publication or expression is true, actual malice must be proved in order to convict the offender." This means that when the defendant proves truth, the state must then prove actual (not implied) malice. The defendant does not have to show "good motives" in order to avail himself of the defense of truth. All he has to prove is the truth. Then it becomes necessary for the state to prove actual malice as an element of the crime.

Further, the civil libel standard of fair comment, allowing a high degree of freedom of expression, is used in Louisiana's criminal defamation statute. R.S. 14:49; see Note, *Constitutionality of the Law of Criminal Libel*, 52 Columbia Law Review 521, 532.

Under the privilege granted by the standard of fair comment, it is not necessary for the defendant to prove truth. All that is necessary is a "reasonable belief," which allows an extremely high degree of freedom of expression. Recently in *State of Louisiana v. Webster*, No. 46, 709 of the Docket of the Louisiana Supreme Court (December 16, 1963) 159 So 2d 140, the court set aside a conviction for defamation on the ground that the defendant had not been allowed to adduce evidence of a reasonable belief in her comment on privileged matter. We quote from the court's opinion as follows:

> "In our opinion the evidence should have been received. Undoubtedly, the qualified privilege provided for in LRS 14:49(2) (a) (quoted above) obtains in the instant matter, for the publication

falls squarely within the language of that section. And under the protection of such privilege the defendant cannot be convicted of defamation unless her writing was actually malicious, regardless of whether it was true or false. Therefore, only proof of malice could have counteracted the privilege.

As we noted in *State v. Garrison*, supra, malice involves intent, and such intent may be inferred by circumstances connected with or surrounding the transaction. Just as the state may show a malicious intent by extrinsic evidence so, too, a defendant must be permitted to introduce evidence of that nature to negative a malicious motive; that is, he may show circumstances from which a judge or jury might conclude that the utterance was made in the reasonable belief of its truth.

To require a defendant to prove the truth of an utterance before permitting him to introduce evidence of circumstances which would refute the state's proof of malicious intent would be to destroy the privilege entirely and, in effect, wipe out the aforementioned provisions of LRS 14:49. Hence, it follows that the court erred in holding that the testimony was admissible only to corroborate direct evidence of the truth of the defamatory statement. In other words, inasmuch as the statement was privileged the defendant was not required to show its truth; she had only to rebut the state's proof of malice in its utterance."

Contrary to appellant's view, his prosecution for defamation, with all of its substantive safeguards,

could not have been an attempt to substitute defamation for contempt of court.

Procedurally, summary contempt proceedings against the contemnor are tried by the same judge. By contrast, the appellant's conviction in the instant case, tried before by an impartial judge (R 25) from a different judicial district approximately three hundred miles from New Orleans, was based on an ordinary and regular criminal trial clothed with all the safeguards provided under the Louisiana Constitution and Statutes. In the instant case, the State of Louisiana proceeded in the normal and regular way as with any trial of any individual accused of a misdemeanor.

Whether appellant *might* have been punished for contempt of court is not determined here and is of no moment in the decision of this case. In *Jurney v. Mac Cracken*, 294 U.S. 125, (1935) this Court dismissed the argument that a defendant was immune from punishment for contempt because his single act constituted a statutory crime as well. Conversely, punishment for a statutory crime such as defamation is not precluded because punishment *might* also have been inflicted for the same act as a contempt of court under the court's inherent powers.

In *Bridges v. State of California*, 62 S. Ct. 190, 314 U.S. 252, the first contempt case in which this court applied the test of "clear and present danger to the administration of justice," the court pointed out at the outset that it was not dealing with state

legislation restricting a specific evil but with the inherent power of courts to punish for contempt. The court stated the following:

> "It is to be noted at once that we have no direction by the legislature of California that publications outside the court room which comment upon a pending case in a specified manner should be punishable. As we said in *Cantwell v. Connecticut*, 310 U.S. 296, 307-308, such a 'declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations.' But as we also said there, the problem is different where 'the judgment is based on a common law concept of the most general and undefined nature.' Id. 308. Cf. *Herndon v. Lowry*, 301 U.S. 242, 261-264. For here the legislature of California has not appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular kind of utterance. The judgments below, therefore, do not come to us encased in the armor wrought by prior legislative deliberation. Under such circumstances, this Court has said that 'it must necessarily be found, as an original question,' that the specified publications involved created 'such likelihood of bringing about the substantive evil as to deprive (them) of the constitutional protection.' *Gitlow v. New York*, 268 U.S. 652, 671."

In *Wood v. Georgia*, supra, the most recent contempt case in which the "clear and present danger to the administration of justice" standard was applied, the court again pointed out that there was no state

statute allowing the prosecution for contempt, and that, in fact, there was a state statute expressly limiting contempt power over out-of-court statements. The Court stated:

> "Initially, however, it should be noted that the Georgia courts have determined that the power to punish for contempt of court is inherent in its state judiciary and the Court of Appeals thus ignored the express limitations imposed by the Georgia Legislature in punishing out-of-court statements. This holding thus deprives the judgment of coming to this Court 'encased in the armor wrought by prior legislative deliberation,' *Bridges v. California*, supra, 314 U.S. at 261, 62 S.Ct. at 192, and it is upon this basis that we proceed."

In all state contempt-of-court cases wherein this court has applied the standard of "clear and present danger to the administration of justice," including *Pennekamp v. Florida*, *supra*, and *Craig v. Harney*, 67 S. Ct. 1249, 331 U.S. 367, 91 L. Ed. 1546, there was no state statute involved, and thus no legislative determination of a specific danger.

"Where the legislative body itself has previously determined the danger of substantive evil arising from utterances of a specified character, the question whether any specific utterance coming within the prohibited class is likely, in and of itself, to bring about the substantive evil, is not open to consideration; it is sufficient that the statute itself is constitutional and that the use of the language comes within its pro-

hibition." 47 Am Jur p. 620; *Gitlow v. New York*, 268 US652, 69 Led 1138, 45 Sct 625; *Dennis v. United States*, 341 U.S. 494, 510, 71 S. Ct. 857, 867.

"Clear and present danger . . . has no application . . . where the legislative body itself has previously determined the danger of substantive evil arising from utterances of a specified character." *Gitlow v. New York, Supra.*

Cantwell v. Connecticut, 310 U.S. 296 60 S. Ct. 900, 84L. Ed. 1213 (1940) also dealing with First Amendment rights, recognized this principle, as follows:

> "Conviction on the fifth count was not pursuant to a statute evincing a legislative judgment that street discussion of religious affairs, because of its tendency to provoke disorder, should be regulated. . . Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from what we must here answer. Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations. Here however, the judgment is based on a common law concept of the most general and undefined nature. . . ."

The Louisiana criminal defamation statute (R.S. 14:47-50) evinces a legislative judgment that the dissemination of hatred and the injury to personal reputation tends to cause acts (such as breach of the peace, or assault and battery, or murder) which the State of Louisiana has a right to prevent. Clear and present

danger therefore has no application because the legislative body itself has previously determined the danger.

Like civil libel, the nub of the crime of defamation is injury to personal reputation, and the state's interest lies in the prevention of acts of violence which are injurious to the public welfare and which the Legislature has determined arise from the conduct proscribed by Section 47 of Title 14 of the Louisiana Revised Statutes of 1950. See Burdick, *The Law of Crime*, Volume 3, Sec. 786, p. 152.

The statute is narrowly drawn to prevent the evil against which it is directed. It regulates the hatemonger rather than the misguided citizen. It is patterned after the law of civil libel and contains all of its safeguards.

It defines hatred as involving actual malice where truth or qualified privilege exist. (R.S. 14:48, 49) See *State v. Lambert*, 188 La. 968, 178 So. 508; *State v. Bienvenu*, 36 La. Ann. 378.

The Louisiana criminal defamation statute takes great pains to see that freedom of discussion in matters of public concern is not jeopardized. It recognizes that judges, like other public officials, are not above criticism, and that fair criticism of judges in the absence of actual malice is privileged.

On the other hand, the Louisiana Statute also recognizes that malicious resort to personal abuse is not in any proper sense communication of information or opinion safeguarded by the First Amendment. In

terms of First Amendment rights, the Louisiana Defamation Statute recognizes the right to discuss and criticize public men and issues freely, but it recognizes that such a right may be abused. It sets forth the conditions under which abuse exists, and it imposes sanctions for such abuse.

It has always been recognized by this Court that freedom of speech is not absolute, and that its abuse may be dealt with through criminal sanctions. *American Communications Assn. v. Douds*, 339 U.S. 382, 70 S. Ct. 674, 683-684 (1950)

"The character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic." Holmes J. speaking, in *Schenck v. U.S.* 249 U.S. 47 (1919). See also Le Buffe and Hayes, *The American Philosophy of Law* (4th ed., 1947, Crusader Press) pp. 234-238.

Speaking of the First Amendment right of free speech, this Court had the following to say in *DeJonge v. Oregon*, 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278 (1937):

> "These rights may be abused by using speech or press or assembly in order to incite to violence or crime. The people through their Legislatures may protect themselves against that abuse."

In *Near v. Minnesota*, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931), a case involving censorship or previous restraint, this Court stated:

> "It is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public, and that *the common-law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not abolished by the protection extended in our constitution.* . . . Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. . . . *Subsequent punishment for such abuses as may exist is the appropriate remedy consistent with constitutional privilege.*" (Emphasis supplied.)

Appellant's malicious, false and personally abusive statement was an abuse of the liberty of free speech accorded by the First Amendment.

The First Amendment protects the right of political opposition and the right of socially significant utterances. But it does not protect socially valueless expression* which maliciously injures personal reputa-

*Appellant's extreme view, expressed on pp. 26-27, 47 of his brief, that limitation of constitutional protection to communication of matters of public concern would be dangerous in practice, that all criminal libel laws should therefore be struck down, and there should be no limits whatever on speech, apparently is based on the idealist view that "what is true will survive." According to Max Lerner, this view is derived from Milton's formulation in his Areopagitica as follows:

> "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do

tion and tends to cause acts of violence which the state has a right to prevent. Such expressions constitute abuses of free speech. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031; Pound, *Equitable Relief Against Defamation and Injuries to Reputation*, 29 Harvard Law Review 640, 651-653; Note, 51 Columbia Law Review 98, 99 note 7; Kelly, *Criminal Libel and Free Speech*, 6 Kansas Law Review 295, 325.

Turning our attention to the case at bar, we must ask the following question:

> "Of what possible social value could there be in appellant's false and malicious statement that the eight criminal court judges were sympathetic to vice and influenced by racketeers?"

Since this false, malicious, and personally abusive statement fails the "social value" test and abuses the right of free speech, it is not protected by the First Amendment, and the "clear and present danger" test is not applicable.

The latter test is inapplicable for the further reason that the Louisiana criminal defamation statute constitutes a legislative determination of a specific evil which the state has a right to prevent by re-

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injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?"

Lerner, *The Mind and Faith of Justice Holmes* (1954) pp 290-291. Mr. Lerner rejects this view, as well as the "survival" theory of truth, as dangerous, unworkable and impractical.

stricting the abuse of free speech. Legislative judgment should not be questioned unless outside the pale of fair judgment. *American Communications Assn. v. Douds*, 339 U.S. 382, 70 S. Ct. 674 (1950).

The Louisiana Defamation Statute is a fairly drawn statute based upon a reasonable legislative judgment. It wisely protects fair criticism of all public men, but restricts malicious, false, personal abuse directed at any citizens, including judges.

To borrow the language of the *Douds* case, *supra*, "we have here no statute which is either frankly aimed at the suppression of dangerous ideas nor one which, although ostensibly aimed at the regulation of conduct may actually be made the instrument of arbitrary suppression of free expression of views. There are here involved none of the elements of censorship or prohibition of the dissemination of information that were present in the cases mainly relied upon by those attacking the statute."

Finally, it should be noted that Emerson, *Toward a General Theory of the First Amendment*, 72 Yale Law Journal 877, 912, quoted at length in appellant's brief, states that the "clear and present danger test must be regarded as unacceptable" and that it was discarded by this Court in *Dennis v. U.S.* 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137.

In determining the meaning of the clear and present danger test in the *Dennis* case, *supra*, this court rejected a similar contention as that which appellant makes herein: that the probability of the dan-

ger sought to be prohibited by the statute must be shown in every prosecution under the statute. This Court stated the following:

> "We must therefore reject the contention that success or probability of success is the criterion."

The test which the court adopted was whether the State's interest is sufficiently substantial to warrant the restriction of speech necessary to avoid the danger.

It is submitted that the State of Louisiana has the right to exercise a legislative judgment that breach of the peace and other crimes of violence are likely to arise from malicious defamatory utterances, and to prevent such socially valueless utterances in order to preserve the peace in the public interest.

3. There is no federal question involved as a right to jury trial in a state prosecution is not a fundamental of due process under the First or Fourteenth Amendments or any other provision of the federal constitution.

The appellant contends that the Louisiana Defamation statute is unconstitutional in its application to criticism of judges, or in the alternative that criticism of judges may not constitutionally be punished without trial by jury. Under this tenuous theory, appellant concedes that the Sixth Amendment does not guarantee trial by jury in a state prosecution; however, he attempts by legal legerdemain to read the provisions of the Sixth Amendment into the right of freedom of speech provided for by the First Amend-

ment. No legal authority is cited to support this theory. Appellant justifies his argument through his version of the historical developments of sedition, contempt of court, and criminal libel statutes. Treating the offense of contempt of court and the crimes of sedition and criminal libel as one, interchangeably, appellant lifts language from court decisions on these subjects and arrives at the conclusion that the First Amendment inherently insures one of the right to trial by jury.

Appellee would like to call the Court's attention to the pertinent provision of the Louisiana Constitution of 1921 and the Revised Statutes of Louisiana dealing with trial by jury as applicable to the instant case.

Article VII, Section 41, of the Louisiana Constitution of 1921, provides:

> "* * * *All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury*. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict." (Emphasis ours.)

LSA-R.S. 15:340 recites:

"Every misdemeanor shall be triable by the judge

without the intervention of a jury."

LSA-R.S. 15:341 states:

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

LSA-R.S. 14:47, under which the defendant was charged, provides that, "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year."

There is no provision in the Constitution of the United States requiring a state to try misdemeanors by jury.

Appellant correctly concedes that in no manner is Article 6 of the Bill of Rights a limitation on the State; and that it is inapplicable to State proceedings. See 31 Am.Juris., Verbo, Jury, Sections 8-10, pp. 14-17, 16 R.C.L. pp. 200, Section 19 and Supp. pp. 4060, Section 19; 22 A.L.R. 1504. However, appellant attempts by legal legerdemain to assert that trial by jury is a fundamental right of freedom of speech constitutionally guaranteed to him. Appellant cites no authority for this proposition. *Nye v. U.S.*, 313 U.S. 33, cited by appellant as emphasizing the jury question, had nothing to do with freedom of speech under the first amendment, but merely involved the construction of an 1832 amendment of the 1789 federal statute concerning summary contempt by Federal Courts. All that the court pointed out was that abuses of the summary nonjury contempt power by federal

judges had led Congress to enact the amendment. The other case cited by appellant as "emphasizing the jury question" is *Craig v. Harney*, supra, a contempt proceeding wherein the Court was concerned with the self-interest of the same judge whose conduct was criticized to sit in judgment upon the contemnor, and summarily, and without a jury trial, to punish him.

The instant case does not involve the power of the same judge who was defamed to sit in judgment upon the defamer. The prosecution of appellant was no "Star Chamber summary non-jury process." Appellant was convicted only after a regular criminal trial before a different judge who had no personal interest whatever in the case.

It has long been settled that trial by jury is not embraced in the rights secured by the fourteenth amendment to the Federal Constitution. *New York Central Railroad v. White*, 243 U.S. 188 37 S. Ct. 247, 61 L.Ed. 667; *Hawkins v. Bleakly*, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678; *Snyder v. Massachusetts*, 291 U.S. 97, 78 L.Ed. 674, 54 S.Ct. 330; *Chappell Chemical Company v. Sulphur Mines*, 172 U.S. 474, 43 L.Ed. 520, 19 S.Ct. 268; *Southern Railway Company v. Durham*, 266 U.S. 178, 45 S.Ct. 51, 69 L. Ed. 231; 31 Am. Jur Verbo Jury, Sections 8-10, pp. 14-17. Accordingly, when state statutes prescribe the trial of issues by a judge without a jury, there is nothing in the federal constitution requiring trial by jury. *Southern Railway Company vs. Durham*,

supra, *Dorr v. U.S.*, 24 S. Ct. 808, 195 U.S. 138, 49 L.Ed. 128; *Tumey v. Ohio*, 273 U.S. 510, 71 L.Ed. 749, 47 S. Ct. 437.

4. There is no federal question involved because the United States Supreme Court has previously determined that a criminal prosecution by a state under a defamation statute does not violate the First or Fourteenth Amendments.

At the outset appellee points out that the United States Supreme Court has had the occasion to pass on constitutionality of criminal libel statutes. On numerous occasions the Court has consistently held that such statutes are within the police power of the State and that they do not violate the First Amendment.

The Constitution of the State of Louisiana recognizes that freedom of speech is not an absolute privilege but is limited to the extent that one is responsible for the abuse of this liberty.

Article 1, Section 3, of the Louisiana Constitution provides as follows:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*"

It is well settled that libelous or slanderous utterances are not protected by the freedom of speech guarantee of the first and fourteenth amendments of

the U.S. Constitution. *Republica v. Oswald*, 1 U.S. 319, 1 Dall 319, 1 L.Ed. 155; *Chaplinsky v. State of New Hampshire*, 62 S. Ct. 766, 315 U.S. 568, 86 L.Ed. 1031; *Beauharnais v. People of Illinois*, 72 S.Ct. 725, 343 U.S. 250, 96 L.Ed. 919; *Roth v. U.S.*, 77 S. Ct. 1304, 354 U.S. 476, 1 L.Ed. 2d 1498; *Breard v. City of Alexandria*, 71 S.Ct. 920, 932, 341 U.S. 622; *Gitlow v. New York*, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138; *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357.

Prior to discussing what the appellee considers the landmark cases on this subject it should be pointed out that the appellant was tried in the same manner as any other person who committed a misdemeanor that would lead to a breach of peace. Appellee felt that this should be emphasized as there are insinuations in appellant's brief that there were political implications in the trial in the lower court. The record will reveal beyond a doubt that this case was tried in the ordinary manner and that the accused was afforded all of his legal rights.

This trial was nothing more or less than an ordinary trial of one accused of defamation under the provisions of R.S. 14:47.

The evil of defamatory utterances is aptly discussed in the Oswald case as follows:

> "With respect to the heart of the libeler, it is more dark and base than that of the assassin, or than his who commits a midnight arson. It is

true, that I may never discover the wretch who has burned my house, or set fire to my barn; but these losses are easily repaired, and bring with them no portion of ignominy or reproach. But the attacks of the libeler admit not of this consolation; the injuries which are done to character and reputation seldom can be cured, and the most innocent man may in a moment be deprived of his good name, upon which, perhaps, he depends for all the prosperity, and all the happiness of his life. To what tribunal can he then resort, how shall he be tried, and by whom shall he be acquitted? It is in vain to object, that those who know him will disregard the slander, since the wide circulation of public prints must render it impracticable to apply the antidote as far as the poison has been extended. Nor can it be fairly said, that the same opportunity is given to vindicate, which has been employed to defame him; for many will read the charge, who may never see the answer; and while the object of accusation is publicly pointed at, the malicious and malignant author, rests in the dishonorable security of an anonymous signature. Where much has been said, something will be believed, and it is one of the many artifices of the libeler, to give to his charges an aspect of general support, by changing and multiplying the style and name of his performances. But shall such things be transacted with impunity in a free country, and among an enlightened people? Let every honest man make this appeal to his heart and understanding, and the answer must be — no!"

Chaplinsky v. State of New Hampshire, 62 S.

Ct. 766, 315 U.S. 568, 86 L.Ed. 1031, involving a prosecution for criminal libel against a citizen who *had publicly called a public official (a city marshal) a "racketeer"* recognized that a state has the right to protect its citizens from injury caused by defamatory utterances. Holding that resort to personal abuse, such as "racketeer," was not in any sense communication of information or opinion safeguarded by the federal constitution and that its punishment as a criminal act raised no question under the Constitution, the court made the following observation:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tends to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question

under that instrument.' *Cantwell v. Connecticut*, 310 U.S. 296, 309-310."

The logical conclusion from the *Chaplinsky* decision (supra) is that in prosecutions for criminal libel, involving words which, by their very utterance, inflict injury or tend to an immediate breach of the peace, the test of clear and present danger (either of injury to the individual who is defamed or of breach of the peace) should not be considered. This conclusion was reached by this court in *Beauharnais v. People of Illinois*, 72 S.Ct. 725, 343 U.S. 250, 96 L.Ed. 919, wherein the court stated:

> "Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

The Louisiana defamation statute (R.S. 14:47-50) is in accord with the federal jurisprudence on libelous statements, including what constitutes a defamatory utterance, privilege, fair comment on public officials, and the destruction of privilege by excess or by actual malice. *White v. Nicholls*, 44 U.S. 266, 3 Howard 266, 11 L.Ed. 591; *Dorr v. U.S.*, 24 S.Ct. 808, 195 U.S. 138, 49 L.Ed. 128; *Philadelphia v. Quigley*, 62 U.S. 202, 21 Howard 202, 16 L.Ed. 73; *Gandia v. Pettingill*, 32 S.Ct. 127, 222 U.S. 452, 56 L.Ed. 267; *Farmers Education & Coop Union v. W. Day, Inc.*,

79 S.Ct. 1302, 360 U.S. 525, 3 L.Ed. 2d 1407; *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357.

The State of Louisiana, as its defamation statute (R.S. 14:47-50) and its jurisprudence show has no tolerance whatever for any special claim by judges of immunity from criticism. It is submitted, however, that under the *Chaplinsky* and *Beauharnais* decisions, supra, the first and fourteenth amendments do not deprive the state in a defamation prosecution of its right and duty to preserve the public peace and to protect all members of society, including judges, from the evils of malicious libelous utterances.

CONCLUSION

In conclusion, permit us again respectfully to call your Honors' specific attention to the fact that no evidence of any type, character, or description was offered by this defendant to controvert the positive affirmative proof offered by the State to prove his guilt not only beyond a reasonable doubt but beyond any doubt. (R 565, 620-621.)

To be more specific, defendant made no attempt to avail himself of constitutional rights of due process of law afforded to him in Louisiana Courts in that he made no attempt to prove the truthfulness of any statement which he made; in fact he made no attempt to prove he even had a reasonable ground to believe that the statements he made, if untrue, he believed them to be true; he made absolutely no attempt to show that there was a lack of actual malice or made

any attempt to show a lack of implied malice. (R 565, 620-621.) He did go out of his way through the cross-examination of his counsel in the district court to embarrass some of the judges by trying to drag in a red herring as to their ancestors or their relatives by affinity. In fact, we are indeed surprised that this thinly veiled attempt has been carried over by brief filed herein by the eminent counsel in this case who audaciously shows on page 8 of his brief in a footnote the ancestors and their occupations of one of the judges who long prior to this defendant's admission to the practice of law had departed this life and who had gone to their last reward.

Your Honors will note on pages 496-497, 504 of the transcript that Judge Platt testified as follows under cross-examination:

"Q. Now, Judge, do you consider a lottery operation a racket?

A. Well, no question about it, lotteries are a racket. I'd put them as a racket.

Q. You Consider that a racket?

A. Yes.

Q. Now, have you ever had any close connection with people in the lottery business?

A. No.

Q. Do you know who Mrs. G. W. Platt is?

A. My mother.

(fol. 750) Q. Did she ever have any lottery business?

A. Never; not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. Well, I will hand you what purports to be a bill of sale—photostatic copy of bill of sale from Mrs. G. W. Platt and ask if you deny the fact that that is her signature which appears thereon?

A. I don't know whether I can identify her signature. I haven't seen her signature in fifty years.

Mr. Gremillion: I am going to object to the introduction of any such document like that photostatic copy.

The Court: He hasn't offered. Let him question on it.

A. It could be her signature. It could be my mother's signature, from what I know of it.

Q. This purports to sell the Original Claiborne Lottery, domiciled at 645 North Dorgenois Street to a man named Eugene J. Philastre, dated March 16, 1946, Algiers, Louisiana. Do you have any knowledge whatever of such a transaction?

A. No.

Q. Do you have any knowledge that your mother owned such a lottery?

A. Positively not. My father was in the lottery business before he died.

Q. Your father was?

A. Yes, but he died in 1938.

Q. Is it possible that your mother was?

A. Was what?

Q. In the lottery business?

A. Positively not. My mother died at the age of eighty-one years and she died in 1954.

Q. But your father was in the lottery business?

A. Yes. I didn't know that except by hearsay. I was married and I wasn't living with them. I was married in 1917 and raising my own family in my home."

* * *

"The Witness: While I am up here, I have had one great honor bestowed upon me since I have been a Judge. I brought it along because I'd like to present it to the Court to show what my real reputation is. On January 28, 1954, I was presented with this silver scroll by the New Orleans Bar Association. It states: 'Presented to the Honorable George P. Platt in recognition of distinguished and loyal service on the bench, by the New Orleans Bar Association.' This was after I had been on the bench for thirty-five years."

The whole brief of eminent counsel in this case is in our opinion a lot of legal legerdemain and by ingenious suggestion to have their views prevail in this court despite positive affirmative jurisprudence to the contrary, as they are requesting in their brief, without any legal basis for the suggestion except their own, for your Honors to overrule the *Beauharnais* case. If your Honors were to overrule the *Beauharnais*

case, you would also have to overrule the *Chaplinsky* case.

Eminent counsel is also attempting in our opinion to have this court legislate rather than interpret the constitutionality of Amendment 1, as he would now make the Louisiana Defamation Statutes unconstitutional if the individual defamed also happened to be a district judge, but constitutional as to all other citizens of our State. He would also in our opinion have your Honors believe that a judge as an individual has to be a milquetoast, as the whole theory of his wanting the defamation law held unconstitutional seems to be some nebulous idea that human nature has changed and that people defamed are no longer pugnacious. If this theory is correct, then we respectfully submit that you could not commit a crime by defaming a clergyman of any religion because he would by nature and theological training be averse to physical encounter, whereas it would be a crime to defame men like Cassius Clay, Sonny Liston, Jack Dempsey, or Gene Tunney. This statement is not made facetiously, but is simply intended here to direct your Honors' attention to the fallacies of the brief submitted by eminent counsel.

Every theory in the defendant's brief predates the Beauharnais case and all his historical references have for years been in a state of innocuous desuetude. At the time of the Beauharnais decision, this court was familiar with this historic background. Defendant wants to revert back to the period prior to the Chap-

linsky and Beauharnais decisions and to turn back the clock to the personal vengeance philosophy of "an eye for an eye, a tooth for a tooth", "burning for burning", "wound for wound", Exodus.XXI, instead of the prohibition of the Sermon on the Mount, "Thou shall not bear false witness."

We have adverted to the definitions of contempt, sedition, and defamation, (commonly called libel.) This court has already held that contempt and libel are distinct and separate offenses; even though the same words are used or the same act committed, prosecution may be had on either or both and does not form a basis for former jeopardy. *Jerney v. Mac Craken*, 294 U.S. 125, (1935.)

None of the constitutional rights, state or federal, of this defendant has been interfered with, and he has been given his day in Court. His guilt has been proven beyond a doubt and this appeal should be dismissed at his cost, or, in the alternative, his conviction and sentence should be affirmed at his cost.

Respectfully submitted,

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CERTIFICATE

I, Michael E. Culligan, a member of the Bar of the United States Supreme Court, hereby certify that this _____day of _____, 1964, a copy of the above and foregoing brief was served on Eberhard P. Deutsch and René H. Himel, Jr., Hibernia Bank Building, New Orleans 12, Louisiana, and Louis P. Trent, 400 Perez Building, 419 Carondelet Street, New Orleans, Louisiana, by depositing same in the United States Mail, postage prepaid.

_____

Of Counsel.

APPENDIX "A"

An Act in addition to the act, entitled, "An Act for the punishment of certain crimes against the United States."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted,* That if any per-

son shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of

the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and or longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, JULY 14, 1798.

APPENDIX "B"

LA. CODE OF CIVIL PROCEDURE

SECTION. POWER TO PUNISH FOR CONTEMPT

Art. 221. Kinds of contempt

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.

Contempts of court are of two kinds, direct and constructive.

Source: New; *cf.* Comment following.

Official Revision Comment

This is the uniform classification of contempts of court in America, recognized and applied in State ex rel. DeBuys v. Judges of Civil District Court, 32 La.Ann. 1256 (1880); and Graham v. Jones, 200 La. 137, 7 So.2d 688 (1942). See 17 Tul.L.Rev. 655 (1943), and 38 Minn.Stats.Anno., § 588.01(1).

Art. 222. Direct contempt

A direct contempt of court is one committed in the immediate view and presence of the court and of which it has personal knowledge, or a contumacious failure to comply with a subpoena or summons, proof of service of which appears of record.

Any of the following acts constitutes a direct contempt of court:

(1) Contumacious, insolent, or disorderly behavior toward the judge, or an attorney or other officer of the court, tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;

(2) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;

(3) Use of insulting, abusive, or discourteous language by an attorney or other person in open court, or in a pleading, brief, or other document filed with the court in irrelevant criticism of another attorney or of a judge or officer of the court;

(4) Violation of a rule of the court adopted to maintain order and decorum in the court room;

(5) Contumacious failure to comply with a subpoena, proof of service of which appears of record, or refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a non-incriminating question when ordered to do so by the court; and

(6) Contumacious failure to attend court to serve as a juror after being accepted as such, or to attend court as a member of a jury venire, when proof of service of the summons appears of record.

Source: New; cf. Rules of the Supreme Court of Louisiana, Rule X, § 4; 38 Minn.Stats.Anno., § 588.01(1), (2); 29 McKinney's Consol.Laws of N.Y. Anno., Art. 19, § 753.

Official Revision Comments

(a) While this article is patterned to some extent upon the Minnesota law, which is the most complete statute found, it has been broadened appreciably so as to include all applicable and useful provisions of the other indirect sources, and to cover the case discussed in Comment (b).

(b) Under the Minnesota and other statutes on the subject, the definition of direct contempt is not broad enough to cover the case of the contumacious refusal or failure of a witness or juror to attend court when subpoenaed or summoned. Yet the whole theory of the direct contempt is that the judge does not need the introduction of evidence to reach his finding, and certainly these cases fall within this theory. Actually, no proof is needed, as the return on the subpoena or summons is in the record, and there is no reason why these cases should not be considered direct contempts. When a witness refuses to be sworn, or to answer a question, all of this occurs in

the immediate view and presence of the court. For this reason, the first paragraph of this article has been broadened to include them within the definition of direct contempt, and Art. 222(5) and 222(6) expressly make them a direct contempt.

Art. 223. Same; procedure for punishing

A person who has committed a direct contempt of court may be found guilty and punished therefor by the court forthwith, without any trial other than affording him an opportunity to be heard orally by way of defense or mitigation. The court shall render an order reciting the facts constituting the contempt, adjudging the person guilty thereof, and specifying the punishment imposed.

Source: New; *cf.* 38 Minn.Stats.Anno., § 588.03.

Library references: Contempt West 30-69; C.J.S. Contempt §§ 43-89.

Official Revision Comment

This article goes beyond its indirect source provision in affording the person charged with contempt an opportunity to make an oral statement by way of defense or mitigation. This accords with customary judicial practices in Louisiana.

See, also, Comments under Arts. 224, 864, 3611, *infra*.

Art. 224. Constructive contempt

A constructive contempt of court is any contempt other than a direct one.

Any of the following acts constitutes a constructive contempt of court:

(1) Wilful neglect or violation of duty by a clerk, sheriff, or other person elected, appointed, or employed to assist the court in the administration of justice;

(2) Wilful disobedience of any lawful judgment, order, mandate, writ, or process of the court;

(3) Removal or attempted removal of any person or property in the custody of an officer acting under authority of a judgment, order, mandate, writ, or process of the court; attorney;

(4) Deceit or abuse of the process or procedure of the court by a party to an action or proceeding, or by his attorney;

(5) Unlawful detention of a witness, party, or his attorney, while going to, remaining at, or returning from the court where the action or proceeding is to be tried;

(6) Improper conversation by a juror or venireman with a party to an action which is being, or may be, tried by a jury of which the juror is a member, or of which the venireman may be a member, or with any person relative to the merits of such an action; or receipt by a juror or venireman of a communication from any person with reference to such an action, without making an immediate disclosure to the court of the substance thereof;

(7) Assuming to act as a juror, or as an attorney or other officer of the court, without lawful authority;

(8) Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties;

(9) Wilful disobedience by an inferior court, judge, or other officer thereof, of the lawful judgment, order, mandate, writ, or process of an appellate court, rendered in connection with an appeal from a judgment or order of the inferior court, or in connection with a review of such judgment or order under a supervisory writ issued by the appellate court; and

(10) Any other act or omission punishable by law as a contempt of court, or intended to obstruct or interfere with the orderly administration of justice, or to impair the

dignity of the court or respect for its authority, and which is not a direct contempt.

Source: New; *cf.* 38 Minn.Stats.Anno., § 588.01(3); 29 McKinney's Consol. Laws of N.Y., Art. 19, § 753.

Official Revision Comments

(a) See Comment (b) under Art. 222, *supra*.

(b) Art. 224(8) is declaratory of the rule of Graham v. Jones, 220 La. 195, 7 So.2d 695 (1942), and is within the constitutional limitations imposed by Bridges v. State of California, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 193 (1941).

(c) Art. 224(10) is an omnibus provision which includes: (1) all acts or omissions punishable as a contempt of court under special statutes, and which are not direct contempts; and (2) all other intentional acts or omissions which fall within the definition of contempt of court, and which are not direct contempts.

Art. 225. Same; procedure for punishing

Except as otherwise provided by law, a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt, and punished accordingly. The rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and shall state the facts alleged to constitute the contempt. A certified copy of the motion, and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena, at least forty-eight hours before the time assigned for the trial of the rule.

If the person charged with contempt is found guilty, the court shall render an order reciting the facts constituting the contempt, adjudging the person charged with contempt guilty thereof, and specifying the punishment imposed.

Source: New; *cf.* C.P. Art. 132; 38 Minn.Stats.Anno., § 588.01.

Official Revision Comments

(a) The procedure in this article employs a rule to show cause, which may issue on the court's own motion or on the motion of a party, and the motion for the rule to show cause sets forth the facts alleged to constitute the constructive contempt. Further, the person charged with committing the constructive contempt is allowed at least forty-eight hours to prepare his defense.

(b) The language "Except as otherwise provided by law" is necessary to avoid any conflict with the provisions of R.S. 23:848, covering charges of contempt for violating an injunctive order issued in a labor relations case, and providing a completely different procedure, including the right to trial by jury, and the right to recuse the trial judge in certain instances, where a person is charged with an "indirect contempt" which is undefined but means the "constructive contempt" of this article.

Art. 226. Same; imprisonment until performance

When a contempt of court consists of the omission to perform an act which is yet in the power of the person charged with contempt to perform, he may be imprisoned until he performs it, and in such a case this shall be specified in the court's order.

Source: New; *cf.* 38 Minn.Stats.Anno., § 588.12.

Official Revision Comment

This article is necessary in rare cases of civil contempt, so as to permit the court to enforce its order or judgment. It accords with the 1870 Code of Practice Art. 937, but overrules legislatively Haffner v. Judge of First Judicial District, 50 La.Ann. 552, 23 So. 478 (1898).

Art. 227. Punishment for contempt

A person may not be adjudged guilty of a contempt of

court except for misconduct defined as such, or made punishable as such, expressly by law.

The punishment which a court may impose upon a person adjudged guilty of contempt of court is provided in R.S. 13:4611.

Source: New.

Official Revision Comment

This article implements the provisions of Const. Art. XIX, § 17, providing that, "The power of the courts to punish for contempt shall be limited by law." This article limits such power to two classes of cases, both of which must be provided expressly by law: (1) misconduct defined as such by a code or statutory provision; and (2) misconduct which a code or statutory section provides is punishable as a contempt. The numerous statutes of Louisiana fall into both categories.

TITLE 13, LA. REVISED STATUTES OF 1950

§ 4611. Punishment for contempt of court

Except as otherwise provided by law:

(A) The supreme court, the courts of appeal, the district courts, and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:

(1) For a direct contempt of court committed by an attorney at law, by a fine of not more than one hundred dollars, or by imprisonment for not more than twenty-four hours, or both; and, for any subsequent contempt of the same court by the same offender, by a fine of not more than two hundred dollars, or by imprisonment for not more than ten days, or both;

(2) For disobeying or resisting a lawful restraining order, or preliminary or permanent injunction, by a fine of not more than one thousand dollars, or by imprisonment for not more than twelve months, or both;

(3) For a deliberate refusal to perform an act which is

yet within the power of the offender to perform, by imprisonment until he performs the act; and

(4) For any other contempt of court, by a fine of not more than two hundred and fifty dollars, or imprisonment for not more than thirty days, or both.

(B) Justices of the peace may punish a person adjudged guilty of a direct contempt of court by a fine of not more than ten dollars, or imprisonment in the parish jail for not more than twenty-four hours, or both. Added Acts 1960, No. 32, § 6.

LA. CODE OF CRIMINAL PROCEDURE
(R.S. 15:11, 12)

§ 11. Inherent power and authority of courts

Every court has the inherent power to enforce the orders which it has power to render, and it is the inherent duty of every judge to see that the proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner; hence every court has authority to issue such writs and orders as may be necessary or proper in aid of the jurisdiction conferred upon it, and to punish, as being a contempt, every interference with or disobedience of its process or orders, as well as every act interrupting or tending to interrupt its proceedings, or impairing the respect due to its authority. Failure to appear for arraignment or trial on the day fixed therefor, after notice, shall be considered a contempt of the court's authority; provided that no one shall be punished for any contempt committed outside of the presence or hearing of the court, except after hearing upon a rule to show cause why he should not be punished for such contempt, served upon him at least twenty-four hours before such hearing.

§ 12. Power of court to punish for contempt

Justices of the peace and judges of municipal courts shall have power to punish each contempt of their authority by a fine of not more than ten dollars, or by an imprisonment of not more than three days, or both; judges of all other courts shall have power to punish each contempt of their

authority by a fine of not more than one hundred dollars or by imprisonment of not more than ten days, or both.

Constitutional Provisions. Const. 1921, art. 19, § 17 provides that the power of the courts to punish for contempt shall be limited by law.